THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO.857 of 2004

ORAL JUDGMENT: (per G.B. J.)

The Writ Appeal has been filed by the APSRTC against the orders passed by the learned single Judge in Writ Petition No.4025 of 2004, dated 5.3.2004.

2. The respondent herein filed the above Writ Petition before the learned single Judge seeking directions to the appellants herein to fix his pay scale by adding all notional increments and one stagnation increment in the pay scale from 1991 to 1997 as per Award in ID.No.80 of 1995, dated 6.2.1997.

3. The respondent, who was working as Driver in the APSRTC, was removed from service by an order dated 22.3.2003. The said removal order came to be questioned by the employee in ID.No.80 of 1995 before the Tribunal. The learned Tribunal passed an award setting aside the order of removal and directed the respondent therein to reinstate the employee with all benefits such as continuity of service etc., but without any back wages. The said award became final. However, when the employee was not given proper fixation of pay scale and the notional increments, he filed the Writ Petition seeking appropriate relief. The learned single Judge allowed the said Writ Petition at the admission stage directing the appellants (APSRTC) herein to grant notional increments and also stagnation increment. The said

order is assailed in this Writ Appeal by the APSRTC.

4. The learned Standing Counsel for the APSRTC submits that the order of the learned single Judge is not sustainable in law inasmuch as there is no specific mention in the award to the effect that the employee is entitled for notional increments also. Relying on the Judgment of the Supreme Court in APSRTC AND ANOTHER vs. S.NARSAGOUD[1] he submits that the order of the learned single Judge is liable to be set aside.

5. On the other hand the learned counsel for the respondent-workman submits that the Award of the Tribunal is very clear on this aspect and the Tribunal only denied the back wages and released all other benefits including continuity of service. In such a situation, the employee is entitled for all the benefits except the back wages. Hence the order of the learned single Judge cannot be said to be suffered from any illegality or irregularity.

6. We have heard the learned counsel for both sides.

7. We have gone through the Award passed by the Tribunal in ID.No.80 of 1995, wherein it was ordered as follows:

> "Hence in the result, the I.D. petition is allowed setting aside the impugned removal orders besides directing the respondent to reinstate the petitioner with all benefits such as continuity of service, etc., but without any back wages under the given set of circumstances. The Award is passed accordingly".

From the aforesaid relief granted by the Tribunal it is clear that except the back wages, the employee was allowed to have the

benefit of all other benefits, such as continuity of service, etc. What was denied was only the back wages and not other benefits. Therefore, the employee is entitled to the monetary benefit from the date of reinstatement and in this regard the learned single Judge has correctly appreciated the facts and directed release of notional increments till the date of reinstatement. Under those circumstances, the Judgment of the Supreme Court, relied on by the learned Standing Counsel for the appellants, cannot be made applicable to the facts of this case. We do not find any infirmity in the order of the learned single Judge.

8. In the result, the Writ Appeal is dismissed at the admission stage. No costs.

(G.BIKSHAPATHY, J.)

14th June, 2004.

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(B.SESHASAYANA REDDY, J.)

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[1] 2003 SCC (L&S) 161.